

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David R. Douglass—Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines:

(1) That the Carrier violated and continues to violate Rules 1 and 2 of the telegraphers' agreement, when, on October 1, 1948, it declared the position of telegraph-clerk at Pastura, N. M., abolished without abolishing in fact the work thereof.

(2) That T. B. Whitis, regularly assigned to the position of telegrapher-clerk at Pastura at the time it was declared abolished, shall be returned thereto and reimbursed for all monetary loss suffered as a result thereof, plus expenses incurred during the time held away from his assigned position; and

(3) That, during any time Whitis was not available for service, the senior idle telegrapher on the Rio Grande Division shall be compensated for 8 hours each day, except Sundays and holidays, at prevailing rate for telegrapher-clerk position at Pastura.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an agreement between the parties bearing an effective date of December 1, 1944, reprinted March 1, 1951 to include revisions. A copy of the agreement is on file with the Board.

Prior to October 1, 1948, the Carrier maintained a telegraph office at Pastura, New Mexico, located on the Rio Grande Division. This office was open 11 P. M. to 8 A. M., except for one hour during the middle of the shift to permit the employe to have a meal period. The claimant, T. B. Whitis, was regularly assigned at this station Monday through Saturday.

The duties of the telegrapher-clerk at Pastura included copying and delivering trains orders, checking number of loaded and empty water cars in the yard, also the number of feet of water in the water tank, then originating and sending messages each day addressed to W A G, L E L and J H B, El Paso, Texas, R. Hicks, Carrizozo, New Mexico, A. G. Bays and C. C. Bell, Tucumcari. (See Exhibits "D-1", "D-2", "E-2", "E-5", "F" and "I".)

Immediately after Pastura was allegedly closed as a telegraph office, train service employes started copying train orders directly from the train

**OPINION OF BOARD:** Prior to October 1, 1948, the Carrier maintained a telegraph office at Pastura, New Mexico and employed one T. B. Whitis as telegrapher-clerk. The duties of Whitis consisted mainly of copying and delivering train orders, checking the number of loaded and empty cars, checking the number of feet of water in the water tank and sending messages regarding the number of cars and amount of water in the tank.

On October 1, 1948, the Carrier closed the station at Pastura because of insufficient business at Pastura. The claimant Whitis was properly notified, under the provisions of Rule D of the Agreement, that his position was being abolished. Thereafter Whitis took his vacation time and two leaves of absence which left him unavailable for service from October 1, 1948 to November 27, 1948.

After the Pastura station was closed, a section foreman took over the duties of checking the water level, the number of loaded and empty cars and reporting the information to a telegrapher or operator at either Santa Rosa or Vaughan. The reporting of this information was entirely done away with on February 25, 1949.

Commencing October 11, 1948, train service crews copied train orders at Pastura on several occasions. The Carrier maintains that this was done on a voluntary basis by these train crews.

It is contended by the Employees that the station at Pastura was not closed, in fact or that if the station was closed on October 1, 1948, it was reopened, in fact, on October 11, 1948, when train order Number 51 was copied.

It is our opinion that the Carrier was not acting in bad faith in abolishing the position of telegrapher-clerk. It is a managerial right to operate in a manner of economical efficiency as long as the rights of the employee are not adversely effected. In speaking of the employee's rights we have reference to such rights to which the employees are entitled by virtue of agreement between the parties.

In the case at hand, the work which was performed by the section foreman was not of such nature as to be classified as exclusive telegrapher-clerk's work. It was of such a nature that it could have been performed by others. Here, the section foreman used the telephone to give the information to a telegrapher or operator who, in turn, transmitted the message to the proper parties.

Under the provisions of Rule 29 of the Agreement it is our opinion that section (a) would have been violated by the copying of train orders by train service crews if an operator had been employed at Pastura. We are unable to agree with the Carrier in its contention that these train orders were copied on a voluntary basis.

The train orders that were copied by train service crews do not appear to have been necessitated by emergency, but rather in an effort to keep the trains moving with a minimum of delay. But the controlling part of Rule 29 (a) insofar as this case is concerned is that part which qualifies the restrictions by limiting its application to offices where an operator is employed.

We must necessarily conclude that the facts, as shown in this docket, do not support a sustaining award under the Rules.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois this 18th day of July, 1952.